

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES	)	
ASSOCIATION and its LODI CHAPTER #77,	)	
	)	
Charging Party,	)	Case No. S-CE-282
	)	
v.	)	PERB Decision No. 239
	)	
LODI UNIFIED SCHOOL DISTRICT,	)	September 29, 1982
	)	
Respondent.	)	
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Appearances; Maureen C. Whelan, Attorney for California School Employees Association and its Lodi Chapter #77;  
James D. Pinnell (Breon, Galgani & Godino), Attorney for Lodi Unified School District.

Before: Jaeger, Morgenstern and Jensen, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by the Lodi Unified School District (hereafter District) to the proposed decision of the hearing officer. The hearing officer found that the District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (hereafter EERA)<sup>1</sup> when it unilaterally altered the vacation benefits of classified employees. The single exception taken to the proposed decision concerns the remedy. The District asserts that the remedy is punitive because it requires the District to

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<sup>1</sup>The EERA is codified at Government Code section 3540 et seq.

grant each affected employee four additional days of vacation in the year the decision becomes final. This remedy would be subject to and conditioned by the approval rights contained in Article VIII, section G of the parties' collective negotiating agreement.

#### FACTS

We find the hearing officer's findings of fact to be accurate and substantially supported by the record. We note that no exceptions were taken to any of her findings. Thus, we adopt her findings of fact as those of the Board.

#### DISCUSSION

The sole issue before the Board is whether the proposed remedy is proper. Since no exception was taken to any conclusions of the hearing officer, it is unnecessary and we expressly decline to decide or adopt the hearing officer's conclusions.

Generally, an order reinstating the status quo ante is appropriate in cases such as this. However, the Board notes that in this case restoration of the status quo ante can only be partial because the affected employees suffered the loss of the right to take vacations in the 1979-80 school year. We note that these employees were paid for four days in September 1979 during which they did not work. We will allow the District to credit this payment toward its financial obligation under the vacation provisions of the collective

negotiating agreement. In order to restore the lost benefit, which includes the right to take vacation, we will require the District to grant to all affected employees the vacation rights contained in the 1979-80 collective negotiating agreement, including the right to take vacation time off. This grant shall include a provision that this Order be carried out in conformance with the relevant provisions of the collective negotiating agreement, including but not limited to the provisions concerning carry-over rights and prior approval by the District.

If, in fact, the District has complied with the terms of this Order subsequent to the submission of this matter to the Board, proof of such compliance shall be filed with the Sacramento Regional Director of the Public Employment Relations Board within ten days of service of this Order.

#### ORDER

Upon the foregoing facts and conclusions of law and the entire record in this case, IT IS HEREBY ORDERED that the Lodi Unified School District and its representatives shall:

#### CEASE AND DESIST FROM:

(a) Failing and refusing to meet and negotiate in good faith, denying the California School Employees Association and its Lodi Chapter #77 its right to represent unit members, and denying employees their right to select an exclusive

representative, by refusing to meet and negotiate in good faith and taking unilateral action with respect to vacation benefits.

TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO  
EFFECTUATE THE PURPOSES OF THE ACT:

(a) Grant to each affected employee the right to take his/her vacation contained in the 1979-80 collective bargaining agreement. This grant shall be exercised in accordance with the relevant provisions of that collective negotiating agreement, including but not limited to the provisions concerning carry-over rights and prior approval by the District.

(b) Within ten (10) workdays following the date of service of this decision, post at all work locations where notices to employees customarily are placed copies of the Notice attached as an appendix hereto signed by an authorized agent of the employer. Such posting shall be maintained for a period of ten (10) consecutive workdays. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material or reduced in size. Within ten (10) workdays following service of this decision, notify the Sacramento regional director of the Public Employment Relations Board in writing of what steps the employer has taken to comply with the terms of this Decision.

Continue to report in writing to the regional director periodically thereafter as directed. All reports to the regional director shall be served concurrently on the charging party herein.

Members Morgenstern and Jensen, concurred.

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California

After a hearing in Unfair Practice Case No. S-CE-282, in which all parties had the right to participate, it has been found that the District violated Government Code subsection 3543.5(c) of the Educational Employment Relations Act (EERA) by failing and refusing to meet and negotiate with the California School Employees Association and its Lodi Chapter #77 (CSEA) by taking unilateral action in September 1979 with respect to change of vacation benefits for 1979-80 school year.

It has also been found that this same conduct violated subsection 3543.5(b) of the EERA since it interfered with the right of CSEA to represent its members.

It has also been found that this same conduct interfered with negotiating unit members' right to be represented by their exclusive representative, thus constituting a violation of subsection 3543.5(a) of the EERA.

As a result of this conduct we have been ordered to post this Notice, and we will abide by the following:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the exclusive representative by taking unilateral action on matters within the scope of representation, as defined by section 3543.2, and specifically with respect to the vacation benefits.

2. Denying the California School Employees Association its right to represent unit members by failing and refusing to meet and negotiate about matters within the scope of representation.

3. Interfering with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO  
EFFECTUATE THE POLICIES OF THE ACT:

The District shall grant to each affected employee the right to take his/her vacation contained in the 1979-80 collective bargaining agreement. This grant shall be exercised in accordance with the relevant provisions of that collective bargaining agreement and the District's policies, including but not limited to the provisions concerning carry-over rights and prior approval by the District.

Dated: \_\_\_\_\_

LODI UNIFIED SCHOOL DISTRICT

By \_\_\_\_\_  
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.